

RECEIVED

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D C 20554

DEC - 1 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

)

)

Amendment of Section 73.202(b),  
Table of Allotments,  
(Statesville and Clemmons,  
North Carolina)

)

)

)

)

MB Docket No. 03-219  
RM-10797

To The Commission

ORIGINAL

COMMENTS AND COUNTERPROPOSAL

**DICK BROADCASTING COMPANY  
OF TENNESSEE**

Barry A. Friedman  
Thompson Hine LLP  
1920 N Street, N W  
Suite 800  
Washington, D.C. 20036

Dated. December 1, 2003

014

## TABLE OF CONTENTS

	<u>Page</u>
Summary . . . . .	11
Introduction . . . . .	2
Scope of Review . . . . .	2
Mercury Is Not Entitled To A First Service Preference . . . . .	4
Factor No. 1 . . . . .	5
Factor No. 2 . . . . .	6
Factor No. 3 . . . . .	7
There Is No Public Interest Basis For Mercury's Proposal . . . . .	12
Counterproposal . . . . .	13
Conclusion . . . . .	15

## SUMMARY

Dick Broadcasting Company, Inc. of Tennessee submits that the Commission must reject the proposal put forward by Mercury Broadcasting Company, Inc., licensee of Station WFMX(FM), Statesville, North Carolina, to substitute FM Channel 289C1 for FM Channel 289C at Statesville, to reallocate FM Channel 289C1 from Statesville to Clemmons, North Carolina, and to modify the license of WFMX to reflect the allotment changes. Pursuant to the standards set forth by the Commission in *Faye and Richard Tuck*, Clemmons is not sufficiently distinct from the Urbanized Areas of Winston-Salem, High Point, and Greensboro, North Carolina to qualify as an independent community. Mercury's proposal clearly constitutes an impermissible attempt to move from a rural area to a well-served urban area. Accordingly, Mercury's proposal must not be credited with a first aural service under the Commission's FM Allotment priorities. Further, due to the loss of service associated with Mercury's proposed downgrade and move to Clemmons, there is no public interest basis for Mercury's proposal. Thus, the Commission must deny the proposal. If the Commission wishes to allow a first aural service at Clemmons, then it should adopt the Counterproposal put forward by DBS. DBS's Counterproposal would allow for a first aural service at Clemmons, without raising the same *Tuck* concerns implicated by Mercury's proposal, and would additionally provide for a first aural service at Iron Gate, Virginia. The Counterproposal clearly constitutes a preferential arrangement of allotments under the Commission's FM Allotment priorities.

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 03-219
Table of Allotments,	)	RM-10797
(Statesville and Clemmons,	)	
North Carolina)	)	
To		The Commission

**COMMENTS AND COUNTERPROPOSAL**

Dick Broadcasting Company, Inc. of Tennessee ("DBC"), the licensee of Stations WKZL(FM), Winston-Salem, North Carolina and WKRR(FM), Asheboro, North Carolina, by its attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby submits its Comments and Counterproposal in response to the *Notice of Proposed Rule Making* in MB Docket No. 03-219, DA 03-3039, released October 10, 2003 ("*NPRM*"), wherein the Commission, in response to a Petition for Rule Making submitted by Mercury Broadcasting Company, Inc. ("Mercury"), the licensee of Station WFMX(FM), Statesville, North Carolina ("WFMX" or the "Station"), proposes the substitution of FM Channel 289C1 for FM Channel 289C at Statesville, reallocation of FM Channel 289C1, from Statesville to Clemmons, and the modification of the license for WFMX which would reflect the allotment changes. In these Comments, DBC establishes that the proposed changes violate fundamental Commission policies in the allocation of FM channels among communities and, accordingly, should be denied forthwith. Alternatively, if the Commission deems Clemmons an independent community for purposes of a first aural service, then DBC counterproposes a modification of the proposed

special reference point for the allotment and a further allotment of FM Channel 289A at Iron Gate, Virginia. In support thereof, DBC states as follows:

### **INTRODUCTION**

Statesville is a community of 23,200 persons<sup>1</sup>, located in Iredell County, North Carolina. Statesville is a rural community that lies north of Charlotte and southwest of Winston-Salem in the North Carolina Piedmont region. According to its own promotional materials, Statesville is a vibrant small city with a growing business community. Statesville is a community that stands on its own and is well deserving of the media voices that currently serve it, including WFMX.

Mercury now seeks to transform WFMX from a Station located in and serving a rural community into an urban facility. It proposes to change the Station's community of license allotment to Clemmons, North Carolina. Unlike Statesville, Clemmons neither has a history as an independent community nor serves as a retail or cultural nexus for a wider area. To the contrary, Clemmons is a suburban community located just 10 minutes from Winston-Salem. It is a separately incorporated village that is linked to the nearby city and Forsyth County by economic, governmental and social ties. Granting Mercury's proposal would not advance any of the Commission's FM Allotment priorities,<sup>2</sup> but rather would contravene the public interest by allowing the relocation of an FM station from a deserving small community to a fully served urban area.

### **SCOPE OF REVIEW**

---

<sup>1</sup> 2000 U.S. Census

<sup>2</sup> See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988) ("FM Allotment Priorities"). The FM Allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; (4) other public interest matters. Co-equal weight are given to priorities (2) and (3).

The first step in evaluating a community of license reallocation proposal is for the Commission to reach a determination that the proposal would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon granted in part*, 5 FCC Rcd 7094 (1990). The Commission's FM Allotment priorities are first full-time service, second full-time service, first local service, and other public interest matters. *See FM Allotment Priorities, supra*.

If a proposal appears to implicate one of these four priorities, the Commission will evaluate the proposal on the merits. However, the Commission has long held that a petitioner cannot claim a first priority where the proposed allotment to an unserved community is merely a pretext for entering an urban market previously not served by the Station. *See, e.g., Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990). According to the Commission:

[W]e remain concerned with the potential for stations to migrate from relatively unserved rural areas proximate to well-served urban areas. For this reason, we will not blindly apply a first local service preference to a proposal for a community proximate to an Urbanized Area (footnote omitted).

*Chillicothe and Ashville, Ohio*, DA 03-3443, released October 31, 2003 at ¶ 4. The instant proceeding presents a classic case of a Station attempting to migrate from a relatively unserved rural area to an already well-served urban area. The Commission must not allow itself to be blinded by Mercury's assertions to the contrary. Given that Mercury's proposal involves the relocation of the Station to a community inside the Winston-Salem Urbanized Area that covers 100% of that urbanized area, the Commission must give serious consideration to whether the Clemmons qualifies as an independent community vis-à-vis Winston-Salem pursuant to the

standards of community independence set forth in *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988)

Under *Tuck*, there are three factors to be considered in determining whether a suburban community is independent from the surrounding urban area for purposes of the Commission's Allotment priorities

(1) signal population coverage, *i.e.*, the degree to which the proposed station will provide service to both the suburban community and the larger metropolis; (2) the size and proximity of the suburban community relative to the metropolis; and (3) the interdependence of the suburban community with the metropolis.

*Apopka, Maitland, and Homosassa Springs, Florida*, DA 03-3555, released November 14, 2003 at ¶ 5. An analysis of the *Tuck* factors clearly demonstrates that Clemmons is a small suburban community intimately tied to Winston-Salem and the surrounding Forsyth County. As such, the instant request amounts to nothing more than a pretext for trading in a rural service for an urban service. Accordingly, the Commission must reject Mercury's claim that its proposal serves the Commission's first FM Allotment priority for a first full-time aural service. *See Greenfield and Del Rey Oaks, California*, 11 FCC Rcd 12681 (1996). Further, Mercury's proposal fails under the fourth Allotment priority as the channel downgrade and the loss of service to the public accompanying Mercury's proposal contravene the public interest. *See Tullahoma, Tennessee and Madison, Alabama*, DA 03-21716, released September 5, 2003. Thus, as DBC will further demonstrate below, Mercury's proposal must be rejected as inconsistent with the Commission's FM Allotment priorities.

#### **MERCURY IS NOT ENTITLED TO A FIRST SERVICE PREFERENCE**

In order to obtain a preference as a first full-time aural service, a petitioner must establish that the community to be served meets the *Tuck* criteria. As established by DBC herein, Mercury's proposed allotment does not entitle it to such a preference.

### **Factor No. 1 (Signal Population Coverage)**

The first *Tuck* factor requires the Commission to evaluate the coverage of the urbanized area by the modified facility from its proposed reference point. In this instance, the proposed 70 dBu coverage, as admitted by Mercury, is equal to 100% of Winston-Salem. This is compounded by 70 dBu coverage of two additional urbanized areas, High Point and Greensboro. In these instances, the coverage factors are 68.2% of High Point and 67% of Greensboro.

Mercury attempts to downplay the extent to which its proposal seeks greater urban coverage by stating that the Station already covers 100% of the Winston-Salem Urbanized Area, as well as the Charlotte and Gastonia metropolitan areas, and that its proposal therefore approximates the move from one urbanized area to another rather than a move from a rural area to an urban area. *See NPRM* at ¶ 4 (citing *Headland, Alabama* and *Chatahoochee, Florida*, 10 FCC Rcd 10352 (1995)). These claims are wide of the mark. As evidenced by the Engineering Statement attached hereto as Exhibit 1, Mercury relied upon incorrect Urbanized Area definitions to reach its conclusion that WFMX's currently covers 100% of the Winston-Salem Urbanized Area from its licensed site. Specifically, Mercury's engineering appears to be based on the Winston-Salem, High Point, and Greensboro metropolitan areas rather than the Urbanized Areas, as required by the Commission. *See* Engineering Statement at 3. The Urbanized Areas are more extensive than the metropolitan areas, and, as a result, Mercury's claims of present coverage are overstated.<sup>3</sup>

---

<sup>3</sup> Mercury's assertion that it covers the Charlotte and Gastonia metropolitan areas, and therefore that its proposal merely constitutes a move from one urbanized area to another, is also based upon an improper definition of Urbanized Areas, as well as improper use of a 60 dBu contour. When the 70 dBu contour is used, it is clear that WFMX's current signal reaches only 18% of the Charlotte Urbanized Area and none of the Gastonia Urbanized Area. *See* Engineering Statement at 5.



As the attached Engineering Statement demonstrates, WFMX currently covers 83% of the Winston-Salem Urbanized Area, whereas its proposed move would result in 100% coverage of the Urbanized Area. See Engineering Statement at 4. DBC has reviewed other cases where petitioners have proposed more than the 50% of the urbanized area that requires the undertaking of the *Tuck* analysis, and DBC has been unable to locate a single case where a petitioner proposing to cover 100% of the Urbanized Area prevailed. See, e.g., *Anniston and Ashland, et al.*, 16 FCC Rcd 3411, 3412 (M. B. 2001). In the single case DBC has located involving a relocation proposal resulting in 100% Urbanized Area coverage, that proposal was denied. See *Greenfield and Del Rey Oaks, California, supra*.

Further, Mercury's proposal would increase coverage to the High Point Urbanized Area and the Greensboro Urbanized Area from 30% to 78% and 0 to 89%, respectively. See Engineering Statement at 4. Combining the Winston-Salem, High Point, and Greensboro areas, which together comprise a single Arbitron advertising market, Mercury's proposal would increase coverage of this combined market from 50% to 93%. See *id.* Thus, Mercury's proposal does not entail a move from one urban area to another, but rather is a blatant attempt to move from a relatively underserved rural area into an already well-served urban area.

**Factor No. 2 (Size and Proximity of the Suburban Community to the Metropolis)**

In evaluating the second *Tuck* factor, the Commission must consider the population of the proposed community of license and its location in proximity to the metropolis that forms the Urbanized Area. The population of Clemmons is 13,827 people.<sup>4</sup> Clemmons lies just ten miles from Winston-Salem and within the same county, Forsyth County. The population of Winston-

---

<sup>4</sup> Year 2000 U.S. Census

Salem is 185,776.<sup>5</sup> Thus, the population of Clemmons is 7.44% of the population of Winston-Salem. These figures are not dispositive, either in favor or against Mercury's proposal. *See Apopka, Maitland, and Homosassa Springs, Florida*, DA 03-3555, released November 14, 2003.

**Factor No. 3 (Interdependence of Suburban Community with the Metropolis)**

The Commission has held that the third *Tuck* factor is the most significant of the three. *See Apopka, Maitland, and Homosassa Springs, Florida, supra*. Evaluation of this factor involves consideration of eight separate subfactors. DBC will address them seriatim.

The first subfactor is the extent to which community residents work in the larger metropolitan area, rather than the specific community. As indicated in DBC's evidence, Clemmons can best be described as "an upper-middle-income community that's more or less an extension of Winston-Salem." *See Exhibit 2*. Census data evidences that only 18.2% of the working population of Clemmons actually work in the local community.<sup>6</sup> Thus, Clemmons does not have a considerable local workforce.

The second subfactor deals with local media. There is a local newspaper, the *Clemmons Courier*, that serves the Lewisville/Clemmons area of western Forsyth County. In addition, the village of Clemmons maintains a local website.

Next, the Commission inquires into the perception of community leaders as to the independence of the local community from the Urbanized Area. Mercury has chosen not to present such evidence. It merely provides the bald assertion that the community of Clemmons exists as a duly incorporated village, that its leaders perceive it as separate and apart from the Urbanized Area. This hardly constitutes satisfactory evidence on this count.

---

<sup>5</sup> *Id.*

<sup>6</sup> Year 2000 U.S. Census

In fact, Mercury's own evidence points to the contrary. Contained in the materials from the village of Clemmons, provided by Mercury, is a document styled, "About the village of Clemmons " In describing the basic facts about the village, the village government states as follows

Clemmons, population 16,045, is part of the "Piedmont Triad" and the Greensboro/Winston-Salem/High Point Standard Metropolitan Statistical Area.

The proximity of Clemmons to this major urban center and its location along Interstate 40 has contributed to the growth of the Village

This evidences a locality that is interrelated to the Urbanized Area and which owes its own growth not to anything unique about the village, but to the fact that it lies in such close proximity to the Urbanized Area

The fourth subfactor concerns local government and elected officials. Based on the information concerning the village contained in Mercury's Petition, Clemmons has a government that is minimal at best. The governing body of the village is a part-time Village Council. Municipal employment consists of 12 persons, eight of whom work in the public works area. Based on the Village's information, the Village's principal governmental functions are maintenance of local roads and city planning, and staff work for city planning is provided by Forsyth County. The following chart lists services in Clemmons and the respective governmental agencies that provide them

Public Schools	Winston-Salem/Forsyth County Schools
Water and Sewer	City of Winston-Salem
Police	Forsyth County Sheriff's Department
Elections	Forsyth County Board of Elections
Library Service	Forsyth County Public Library System
Waste Collection	Private Contractor

As this chart reveals, the level of independent government in Clemmons is minimal at best. This type of government does not evidence an independent community under *Tuck*. See *Anniston and Ashland, Alabama, et al* , 16 FCC Rcd 3411, 3414 (M.M.B. 2001).

Under the fifth subfactor, the Commission looks to the existence of a local telephone directory and zip code. On the former, Clemmons, as admitted by Mercury, is contained within a telephone directory published by the local exchange carrier for Winston-Salem and Forsyth County. On the latter, the village has its own zip code. This constitutes a draw

In connection with the sixth subfactor, The Commission considers commercial establishments, health facilities and transportation systems. According to the statement of Bob Morphis (Exhibit 3 hereto): “The vast majority of the business in that town are situated in two strip shopping centers that face each other.” Turning to Mercury’s evidence, it is, at best, confusing. In one section, we are provided with a statement contained the village of Clemmons website that lists 17 local businesses. Also included by Mercury is a listing drawn from the “Yahoo! Yellow Pages.” These are intended to represent businesses that are located in Clemmons. However, Mercury provides no correlation between a reference to Clemmons in a business name and the actual bounds of the village. DBC submits that the village of Clemmons website statement, attached to Mercury’s Petition, is the better evidence and it indicates that there are only 17 local businesses.

As for health services, there is no detail as to the health care providers and any evidence that the health care providers are actually located in Clemmons. What is undisputed is that *Clemmons does not have a public or private hospital or any medical facility related to a hospital or primary care facility.* In the village of Clemmons website, instead of listing hospitals and doctors, the public is advised to review the website at [www.realpages.com](http://www.realpages.com)\* for a listing of

hospitals and doctors. Likewise, Clemmons does not have a nursing home or even a dentist. This is hardly a community with a medical infrastructure.

As for local transportation, Mercury does not even attempt to make a case, as there is no case to make.

All in all, this evidence suggests at best that there are 17 local businesses identified by the village government. Beyond that, there is a minimal showing of health services and no showing of local transportation. This fails to evidence a local commercial establishment.

Under the seventh subfactor, the Commission considers whether the community sustains a separate advertising market. In support of this, Mercury offers the self-serving statement of an individual associated with the local newspaper to the effect that “local businesses in Clemmons advertise in *The Clemmons Courier*, which enables them to reach the residents of Clemmons, and do not rely solely on Greensboro, High Point, or Winston-Salem media sources.” This individual is hardly a disinterested person such that her hearsay evidence should be accepted and given weight. See *Janice Fay Sarber*, 5 FCC Rcd 6155, 6158 (1990). Accordingly, this is hardly dispositive evidence in support of Mercury’s proposal.

To the contrary, the village’s own website appears to contradict Mercury’s showing. In a listing of local media, the website mentions “The Clemmons Courier,” but also points to “The Winston-Salem Journal,” a daily newspaper, and “The Winston-Salem Chronicle,” another weekly publication. More importantly, DBC has consulted with two members of the advertising community in Winston-Salem. Bob Morphis provides a telling opinion.

*I know a thing or two about this market because my agency is truly local. All my clients are based in the Triad, and more than 98% of my media buys are in this market. Clemmons is a fine town, but is not a separate market. I’ll argue that point with anyone who says differently.*

Exhibit 3. As this statement demonstrates, Clemmons is a suburb that is part of the Urbanized Area as far as advertisers are concerned.

The eighth and final subfactor involves whether the specified community relies upon the metropolitan area for municipal services. Mercury responds by discussing a number of local services, all of which, upon inspection, are metropolitan-wide services.

Mercury first discusses the public library system. However, the public library in Clemmons is part of a system operated not by the village but by Forsyth County. Next, Mercury mentions the local schools. Again, the village does not operate the schools. Rather, the schools are part of a system operated by Winston-Salem and Forsyth County. Mercury then goes on to discuss public safety. Clemmons does not have a local police force, but relies on the Forsyth County Sheriff's Department. Finally, Mercury refers to fire service. As indicated by Exhibit 4 hereto, fire services in Forsyth County are provided by volunteer fire departments. A volunteer group operates in the Clemmons area.

The village of Clemmons provides no relevant services to residents of the Clemmons community. Rather, the community relies on Forsyth County for the majority of its services, and the city of Winston-Salem for important services such as water and sewer. Hence, this factor does not favor Clemmons as an independent community.

After reviewing all of these subfactors, Mercury is unable to sustain its case on this important third *Tuck* factor. The only subfactor fully in Mercury's favor is the second. The first, while in Mercury's favor, is only so by the barest of margins. The subfactors weighing against Mercury include the third, fourth, sixth, seventh, and eighth. The fifth subfactor constitutes a draw in that one element favors Mercury while the other does not. Considering these subfactors in toto, the third *Tuck* criterion clearly weighs against Mercury's proposal. Further, given that

*Tuck* the first and second *Tuck* criteria counsel against Mercury's proposed allotment change, Mercury has failed to make the case that Clemmons qualifies as an independent community.

### **THERE IS NO PUBLIC INTEREST BASIS FOR MERCURY'S PROPOSAL**

Having failed in connection with the first FM Allotment priority, Mercury remains entitled to consideration under the fourth priority. This priority involves the public interest considerations vis-à-vis removing the Station from its existing community, and thereby disrupting existing listening patterns, in favor of a change in the allotment to a new community. DBC submits that there exists no public interest basis for the instant proposal.

In determining whether the change in allotments would serve the public interest, the Commission must consider that Mercury is requesting a downgrade of the channel. Mercury's own evidence indicates that the areas and populations served by its 60 dBu contour will go from 2,733,625 people and 22,316 sq. km. to 1,433,845 people and 16,286 sq. km. This amounts to a loss in service of 1,299,780 persons and 6,030 sq. km. This represents a significant loss in service.

The Commission does not countenance the creation of a large loss in service to populations and areas. See *Tullahoma, Tennessee and Madison Alabama*, DA 03-2716, released September 5, 2003, at ¶ 18. This is especially so where the loss is resulting from an intentional downgrade in channel by the petitioner. *Id.* This interruption in service to the public is one that cannot be ignored. According to the Commission:

Even assuming that service from the Lineville and Anniston Class C3 allotments would commence simultaneously or nearly simultaneously with the cessation of Class C operations from Anniston, approximately four hundred thousand individuals, over a widely spread geographic area, would lose service. These individuals would be precisely the type of persons the Commission expressed concern about in *Community Modifications II*, since the net result of any action granting Emerald's proposal would be that a substantial population, with a legitimate expectation of continued service, would suddenly find that they no

longer have access to 'the signal of an operating station that can be accessed today simply by turning on a radio set.' The approximately 400,000 individuals in question would not even be offered the 'poor substitute' of a vacant allotment capable of providing service at some future date. The population is substantial, in both absolute numbers and relative to the proposed gains. Therefore, we conclude that the disruption to existing service that would be caused by grant of Emerald's proposal substantially offsets the purported gains (footnote omitted).

*Eatonton and Sandy Springs, et al*, 6 FCC Rcd 6580, 6586 (M M B. 1991); *see also Greenfield and Del Rey Oaks, California*, 11 FCC Rcd 12681 (1996). Accordingly, Mercury's proposal fails to satisfy the Commission's public interest requirements for the fourth FM Allotment priority.

An evaluation of Mercury's proposal under the factors set forth in *Tuck* indicates that Mercury is attempting to move WFMX from a relatively underserved rural area to a well-served urban area. Clemmons, North Carolina does not constitute an independent community; Mercury is proposing to relocate the Station's community of license there in order to achieve better coverage of the Winston-Salem Urbanized Area. Therefore, pursuant to *Tuck*, Mercury's proposal should not be credited with a first FM Allotment preference. Further, Mercury's proposal fails to meet the public interest requirements of the fourth FM Allotment priority. Accordingly, Mercury's proposal should be denied forthwith.

### **COUNTERPROPOSAL**

In the event that the Commission concludes that its FM Allotment priorities and the public interest favor a first aural service at Clemmons, North Carolina, DBC proposes an alternative to Mercury's proposal that better serves the public interest. Under DBC's *Counterproposal*, the proposed reference point for the allotment would be the Station's existing transmitter site. In addition, the Commission should allot a first local service on Channel 289A at Iron Gate, Virginia. Should the Commission accept DBC's *Counterproposal*, DBC intends to



apply for Channel 289A at Iron Gate, and should the Commission grant DBC's application, construct the authorized facilities

To permit the allotment of Channel 289A to Iron Gate, DBC proposes the same downgrade of Channel 289C at Statesville, North Carolina, to 289C1, and the reallocation of 289C1 from Statesville to Clemmons, North Carolina. Based on transmission from the licensed coordinates for the Station, there are no obstructions which would prevent reception of the 70 dBu F(50,50) principal community grade signal in Clemmons. This operation would bring a first aural service to Clemmons without implicating *Tuck*-related urbanized area concerns.

Additionally, this proposal allows for a first aural service at Iron Gate, Virginia. Iron Gate is an independent community for purposes of the Commission's FM Allotment priorities. Iron Gate is located in rural Alleghany County, near Covington and Clifton Forge, Virginia. *See Exhibit 5*. At the time of the 2000 U.S. Census, Iron Gate's population was 404. *See Exhibit 6*. Iron Gate was incorporated as a town in 1890, and its charter grants the town the authority, among other things, to elect a Council, to collect taxes, to establish a water and sewer department, and a fire department, and to hire staff. *See Exhibit 7*. Today, Iron Gate has its own zip code. *See Exhibit 8*. It is governed by a Council consisting of a mayor and six council members. *See Exhibit 9*. The Council is supported by a town clerk and a town treasurer. *Id*. Iron Gate is home to a number of churches and businesses, and a volunteer fire department. *See Exhibit 10*. It is also home to the Iron Gate Gorge, a recreational attraction on the Jackson River. *See Exhibit 11*. Given that Iron Gate is listed in the U.S. Census, and is home to businesses, churches, tourist attractions, and a local government that give the town its own identity, Iron Gate is entitled to the presumption that it constitutes a "distinct geographical population

grouping ” *See Crisfield, Maryland, Belle Haven, Cape Charles, Exmore, Nassawadox, and Poquoson, Virginia*, DA 03-2980, released September 29, 2003.

These factors also serve to demonstrate the independence of Iron Gate from the Urbanized Areas of Covington and Clifton Forge, Virginia under the standards set forth in *Tuck, supra*. First, in connection with *Tuck*’s signal coverage factor, the predicted 70 dBu contour for the proposed allocation site encompasses 100% of the Clifton Forge Urbanized Area and 34% of the Covington Urbanized Area. *See* Engineering Statement at 7. With regard to the second *Tuck* factor, the population of Covington is 6,303 persons. *See* Engineering Statement at 8. The population of Clifton Forge is 4,289 persons. *See id*. Thus, the Iron Gate population is 9.4% of the Clifton Forge population and 6.4% of the Covington population. *See id*. With regard to the third *Tuck* factor, the above description of Iron Gate reveals that its local government, its churches and businesses, and its recreational attractions distinguish it from the surrounding cities of Clifton Forge and Covington. In this rural area of Virginia, Iron Gate stands as a distinct locality with its own unique identity.

This Counterproposal would bring a first aural service to both Clemmons, North Carolina and Iron Gate, Virginia. The proposed channel downgrade at Clemmons would produce a loss of primary coverage to 5,756 square kilometers with a Census population of 752,632 persons. *See id*. However, this entire loss area is well-served. *Id*. The new allotment at Iron Gate produces a gain of primary service to 3,070 square kilometers with a Census population of 193,656. The Counterproposal therefore serves the public interest.

## CONCLUSION

DBC submits that the Commission must reject Mercury’s proposal to substitute FM Channel 289C1 for FM Channel 289C at Statesville, North Carolina, reallocate FM Channel 289C1

from Statesville to Clemmons, North Carolina, and modify the license of WFMX to reflect the allotment changes. Pursuant to the standards set forth by the Commission in *Faye and Richard Tuck*, Clemmons is not sufficiently distinct from the Urbanized Areas of Winston-Salem, High Point, and Greensboro, North Carolina to qualify as an independent community. Mercury's proposal clearly constitutes an attempt to move from a rural area to a well-served urban area. Accordingly, Mercury's proposal must not be credited with a first aural service under the Commission's FM Allotment priorities. Further, due to the loss of service associated with Mercury's proposed downgrade and move to Clemmons, there is no public interest basis for Mercury's proposal. Thus, the Commission must deny the proposal. If the Commission wishes to allow a first aural service at Clemmons, then it should adopt the Counterproposal put forward by DBS. DBS's Counterproposal would allow for a first aural service at Clemmons, and provide for a first aural service at Iron Gate, Virginia. The Counterproposal clearly constitutes a preferential arrangement of allotments under the Commission's FM Allotment priorities.

WHEREFORE, Dick Broadcasting Company, Inc. of Tennessee respectfully requests that the Commission deny the Petition for Rule Making submitted by Mercury Broadcasting Company to substitute FM Channel 289C1 for FM Channel 289C at Statesville, North Carolina, to reallocate FM Channel 289C1 from Statesville to Clemmons, North Carolina and to modify the license for Station WFMX(FM), Statesville, North Carolina to reflect the allotment changes. In the alternative, DBC respectfully requests that the Commission accept DBC's Counterproposal to allot Channel 289A to Iron Gate, Virginia, and to establish the proposed reference point for the Channel 289C1 allotment for Clemmons, North Carolina at the current transmitter site of WFMX

Respectfully submitted,

**DICK BROADCASTING  
COMPANY, INC. OF TENNESSEE**

A handwritten signature in black ink, appearing to be 'B. Friedman', written over a horizontal line.

Barry A. Friedman  
Thompson Hine LLP  
1920 N Street, N.W  
Suite 800  
Washington, D.C. 20036

Dated December 1, 2003

**EXHIBIT 1**

**Dick Broadcasting Co.  
Greensboro, North Carolina**

**Engineering Statement  
Counterproposal to MB Docket No. 03-219  
WFMX (FM) Reallotment To  
Clemmons, North Carolina**

**November 2003**

© 2003 Dick Broadcasting Co.

**Timothy L. Warner, Inc.  
Post Office Box 8045  
Asheville, North Carolina 28814-8045  
(828) 258-1238  
twarner@tlwinc.net**

Dick Broadcasting Co.  
Greensboro, North Carolina

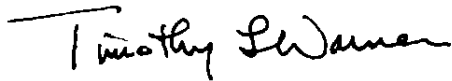
Table of Contents

Description	Page	Figure
Table of Contents . . . . .	1	
Declaration . . . . .	2	
Background . . . . .	3	
Mercury Uses Incorrect Urbanized Area Definitions .3		
Special Reference Site Justification is Flawed . . . . .5		
Alternative Allotment Proposal..... . . . .6		
Area and Population . . . . .	8	
Iron Gate Allocation Study. . . . .9		
70 dBu F(50,50) Contours over Urbanized Areas . . . . .1		
Terrain Profile... . . . .	2	
Area to Locate (Clemmons)..... . . . .3		
Area to Locate (Iron Gate) . . . . .4		
Iron Gate Urbanized Areas . . . . .5		
Iron Gate Coverage Area.. . . .6		

Dick Broadcasting Co.  
Greensboro, North Carolina

Declaration

I declare, under penalty of perjury, that I am a technical consultant to broadcasting and other communications systems, that I have over twenty five years of experience in the engineering of broadcast and other communications systems, that I am familiar with the Federal Communications Commission's Rules found in the Code of Federal Regulations Title 47, that I am a Professional Engineer registered in North Carolina, that I have prepared or supervised the preparation of the attached Engineering Statement for Dick Broadcasting Co., and that all of the facts therein, except for facts of which the Federal Communications Commission may take official notice, are true to the best of my knowledge and belief.



Timothy L. Warner, P.E  
Post Office Box 8045  
Asheville, North Carolina 28814-8045  
(828) 258-1238  
30 November 2003



**Dick Broadcasting Co.  
Greensboro, North Carolina**

**Background**

Dick Broadcasting Co. ("DBC") is the licensee of FM broadcast stations WKZL, Kernersville, North Carolina, and WKRR, Asheboro, North Carolina.

Mercury Broadcasting Company, Inc ("Mercury") has filed a petition for rulemaking, released by the commission as MB Docket No. 03-219, RM-10797, to reallocate Channel 289 to Clemmons, North Carolina, downgrade the allotment from Class C to Class C1, and to modify the authorization for WFMX (FM) to specify operation at Clemmons, North Carolina, on Channel 289C1.

DBC herein provides a counterproposal which will lead to a preferential arrangement of allotments.

**Mercury Uses Incorrect Urbanized Area Definitions**

Mercury's engineering consultant, Mullaney Engineering, Inc., provides a Figure 2 which displays the licensed WFMX (FM) 60 dBu F(50,50) contours along with reference contours from the proposed special reference point. The figure shows the communities of Winston-Salem, High Point, and Greensboro in the proposed coverage area and Charlotte and Gastonia in the licensed coverage area. However, the areas shown appear to be metropolitan areas, not urbanized areas as required by the Commission. Figure 1 of this exhibit shows the licensed and proposed 70 dBu F(50,50) contour, also known as the principal community contour or the 3.16 mV/m contour, along with the relevant intersecting urbanized areas. The